

INTERNAL REVENUE SERVICE
TE/GE Division
Director, Exempt Organizations

DEPARTMENT OF THE TREASURY
1100 Commerce Street
Dallas, Texas 75242-0000

Date: AUG 17 2000

COPY

Employer Identification Number:
[REDACTED]

Person to Contact:
[REDACTED]

Contact Telephone Number:
[REDACTED]

In Reply, Refer To:
[REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code.

You were incorporated in the [REDACTED]. Your Articles of Incorporation indicate that you are organized to exercise any and all duties and prerogatives of [REDACTED], the owner of certain tracts of land which have been platted into [REDACTED] - [REDACTED], [REDACTED], [REDACTED], including but not limited to, those matters set out in Declaration of Reservations, Easements, Covenants, Conditions, and Restrictions, as duly recorded in the [REDACTED] of [REDACTED], which matters relate to (1) the Maintenance Charge and the Maintenance Fund described therein and (2) the duty to maintain and repair [REDACTED] within the subdivision, and maintain and repair the [REDACTED], provided the [REDACTED] has been conveyed to the corporation.

The Declaration of Reservations, Easements, Covenants, Conditions, and Restrictions (the Declaration) indicates that [REDACTED] are subject to an annual maintenance charge. The annual maintenance charge is to be used to create a fund to be known as the "maintenance fund." The Declaration states that the lot owners automatically become members of the non-profit corporation.

The Declaration also indicates that after the declarant has sold and conveyed at least [REDACTED] % of the total square feet situated within the lots, the declarant may cause a non-profit corporation to be organized under the laws of [REDACTED] to own and maintain the [REDACTED].

[REDACTED] is the developer and original owner of the property that is located within the city limits of [REDACTED]. The property consists of [REDACTED] acres and is divided into three lots. [REDACTED] and is owned by [REDACTED].

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[REDACTED]
[REDACTED]
[REDACTED] has no interest in this entity. A [REDACTED] was built on this lot in [REDACTED]. [REDACTED] owns [REDACTED] which consists of [REDACTED] acres. [REDACTED] also owns [REDACTED] which consists of [REDACTED] acres. [REDACTED] will be donated to the organization upon completion of a [REDACTED] on the lot. The construction costs of the [REDACTED] and [REDACTED] were paid by [REDACTED] as the developer and original owner of the property.

Your president is [REDACTED], an employee of [REDACTED] - [REDACTED]. Your vice president is [REDACTED], an employee of [REDACTED]. The secretary is [REDACTED], an independent contractor who works for [REDACTED], including [REDACTED]. These three individuals also serve as your directors. None of your officers or directors receive compensation for their services to you.

Your Bylaws indicate that you have one class of members. Membership is not contingent on the ownership of property in the area served by you.

You indicate that there are no set annual dues or assessments. Members of the association will be assessed maintenance charges on an as needed basis. These funds will be expended for repairs, mowing, and maintenance in and around the [REDACTED] and [REDACTED].

You stated that you have had no revenues or expenditures since you were formed. You also indicated that you are unable to provide proposed budgets for [REDACTED] and [REDACTED] because you don't know when the property will be transferred to you and you have no idea of the cost to mow grass, repair fences or [REDACTED], when and if necessary.

[REDACTED] requires that property owners who sell less than all of any tract of land owned and located within the [REDACTED] city limits form a subdivision that is subject to the city's subdivision ordinances. The section of the ordinance applicable to the property developed by [REDACTED] requires the construction of the [REDACTED] and [REDACTED] described above. The ordinance also requires the establishment of a "maintenance entity" that will own and maintain the [REDACTED] and [REDACTED]. The ordinance does not require the "maintenance entity" be formed as a non-profit corporation under [REDACTED]. Nor does the ordinance require that the "maintenance entity" receive exemption under section 501(c)(4) of the Internal Revenue Code.

Section 501(c)(4) of the Internal Revenue Code provides, in part, for the exemption of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Sections 1.501(c)(4)-1(a)(2)(i) and (ii) of the Income Tax Regulations state, in part, that an organization is operated exclusively for the

[REDACTED]

promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one that is operated primarily for the purpose of bringing about civic betterments and social improvements. An organization is not operated primarily for the promotion of social welfare if it is carrying on a business with the general public in a manner similar to organizations that are operated for profit.

Revenue Ruling 74-99, 1974-1 C.B. 131, attempted to clarify the definition of "community". It stated that a "community" within the meaning of section 501(c)(4) was not merely "an aggregation of homeowners bound together in a structured unit formed as an integral part of a plan for the development of a real estate subdivision and the sale and purchase of homes therein." Although it was stated that an exact delineation of the boundaries of a "community," within the scope of section 501(c)(4) was not possible, it was noted that the term as used in this section "has traditionally been construed as having a reference to a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision, or a unit or district thereof." No minimum size was set.

In Revenue Ruling 77-273, 1977-2 C.B. 194, an organization that provided security services for residents and property owners was determined to be carrying on a business with the general public and didn't qualify for exemption under section 501(c)(4) of the Internal Revenue Code.

You state that you weren't formed because [REDACTED] wanted to develop the original [REDACTED] acres. You indicate that your existence is required by the rules of [REDACTED]. You interpret the subdivision ordinances as requiring the formation of a non-profit corporation.

However, it appears that you would never have been formed but for [REDACTED]'s desire to sell his property. Further, while the subdivision ordinances of the [REDACTED] require the formation of a "maintenance fund", they don't require the formation of a non-profit organization. Even if the city's ordinances required the formation of a non-profit organization, this requirement would not automatically entitle the non-profit organization to tax-exempt status under section 501(c)(4) of the Internal Revenue Code.

As in Revenue Ruling 74-99, you were formed by a developer as an integral part of a plan for the development of a subdivision. The developer has control of the association and its board of directors until the association no longer serves the private business interest of the developer. You do not possess the "community" characteristics outlined in the Revenue Ruling as necessary in order to overcome the private benefit issues.

Further, by providing the detention pond and storm water drain services on a regular basis you are carrying on a business with the general public like the organization described in Revenue Ruling 77-273 that failed to qualify for exemption under section 501(c)(4).

While the [redacted] and [redacted] you will own and maintain provide some benefit to the community surrounding the subdivision, the benefit to the members of the association is more than incidental.

Accordingly, it is held that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code, and you are required to file Federal Income Tax Returns using Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you agree with these conclusions or do not wish to file a written protest, please sign and return the enclosed Form 6018.

If you have any questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

Steven T. Miller

Steven T. Miller
Director, Exempt Organizations

Enclosures:

Publication 892
Form 6018

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